

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

WILLIAM CAMP,

Petitioner,

v.

CASE NO. 2:09-CV-399
JUDGE SMITH
MAGISTRATE JUDGE KING

ED SHELDON, Warden,

Respondent.

OPINION AND ORDER

On June 2, 2009, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner objects to all of the Magistrate Judge's recommendations. Petitioner complains that the Magistrate Judge recommended dismissal of his habeas corpus petition under Rule 4 without requiring respondent to file a Return of Writ. He further objects to the Magistrate Judge's suggestion that his claim under *Blakely v. Washington*, 542 U.S. 296 (2004), may be procedurally defaulted. He contends that the trial court's imposition of consecutive sentences was constitutionally prohibited despite the United States Supreme

Court's decision in *Oregon v. Ice*, – U.S. –, 129 S.Ct. 711, 714-15 (2009).

Pursuant to 28 U.S.C. §636(b), this court has conducted a *de novo* review of the Magistrate Judge's *Report and Recommendation*. For the reasons discussed therein, petitioner's arguments are not persuasive. Rule 4 of the Rules Governing Section 2254 Proceedings in the United States District Courts provides:

If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

Such are the circumstances here. As discussed by the Magistrate Judge, the United States Supreme Court in *Oregon v. Ice, supra*, held that use of factual findings to justify imposition of consecutive sentences is not constitutionally prohibited. Therefore, regardless of any procedural default, petitioner's claim is without merit. To the extent that petitioner may be raising an issue regarding the violation of state law, such claim fails to present an issue warranting federal habeas corpus relief. 28 U.S.C. §2254(a); *Pulley v. Harris*, 465 U.S. 37, 41 (1984); *Smith v. Sowders*, 848 F.2d 735, 738 (6th Cir. 1988).

Therefore, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

s/George C. Smith
GEORGE C. SMITH
United States District Judge